IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 15462 of 2004

Between:

K. Venkata Rami Reddy, S/o. K. Konda Reddy,
R/o. 51-1027-1, Sitaramanagar, KURNOOL.

... PETITIONER

AND

1 Deputy Transport Commissioner & Secretary Regional Transport Authority, KURNOOL.
2 Regional Transport Officer, Regional Transport Authority, KURNOOL.
3 Vigilance & Enforcement Officer, Vigilance & Enforcement Department, KURNOOL.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari to call for records and quash the impugned order passed in R.No. 8151/C1/2001, dated 01-07-2004 by the 1st respondent.

Counsel for the Petitioner: MR.K.MADHAVA REDDY

Counsel for the Respondents: GP FOR TRANSPORT

The Court at the admission stage made the following :

ORDER:

The petitioner is the registered owner of a goods carriage bearing Registered

No. AP 21 T 8181. He is the Transport Contractor of A.P. State Civil Supplies Corporation in the name of Sri Srisaila Mallikarjuna Transports. He transported essential commodities under Public Distribution System. On 15-09-2001, the first respondent issued a notice in R.No.8151/A3/2001 informing that the goods carriage No. AP 21 T 8181 carried over loads while transporting different goods to different destinations and requested him to pay the compounding fee of Rs.19,62,200/- under Section 200 of the Motor Vehicles Act and directed him to avail the opportunity. The petitioner contends that on account of the animosity among the partners and on account of the pressure from other partners, the third respondent verified the old records and issued the said notice. The notice given by the third respondent is against the provisions of Section 113, 114 and 207 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') and Rule 286 and 399 of A.P. Motor Vehicles Rules, 1989 (for short 'the A.P.M.V. Rules). The third respondent exercised the power of issuing the notice without any authority of law. The notice issued by the third respondent cannot form a basis to demand compounding fee under Section 200 of the M.V. Act. The first respondent issued the impugned order on 01.07.2004 in pursuance of the notice dated 15.09.2001 mentioning that the explanation given by the petitioner is not satisfactory. Therefore, he was asked to pay a compounding fee as mentioned in the notice, dated 15.09.2001. The petitioner being aggrieved by the impugned order approached this Court through this writ petition seeking to quash the impugned order dated 01.07.2004.

2. The respondents filed the counter-affidavit of the first respondent and its contents are briefly as follows:

The Regional Vigilance and Enforcement Officer, Kurnool, by letter No.125/C1/2001 dated 07.07.2001 informed the first respondent that the Goods vehicle bearing Registration No. AP 21 T 8181 carried overload of rice, wheat, sugar etc., on more than 352 occasions during the financial year 2000-01. Basing on the data furnished by the said Enforcement Officer, a show cause notice was issued on 15.09.2001 proposing to levy a compounding fee of Rs.19,62,200/- under the M.V. Act for violation of the permit conditions etc., In the explanation, dated 26.09.2001, the petitioner admitted carrying overloads, thinking that the essential commodities are exempted from overloading. On

01.07.2004, the petitioner was informed through a letter to pay the compounding fee. Once it is established either on the spot or from material evidence that a particular goods vehicle contravened the provisions of Section 113 of the M.V. Act, such person shall be punishable with minimum fine of Rs.2,000/- and an additional amount of Rs.1,000/- per ton of excess load under Section 194 of the M.V. Act. The contention of the petitioner that the authorities have to check the vehicle and issue check report is not legally valid. Under the M.V. Act, the Police authorities and nodal agencies like the Regional Vigilance and Enforcement Officers may check the vehicle and demand production of the records pertaining to the said motor vehicle. Since the third respondent established the commission of offence by the petitioner, there was no need for the respondent to call for the records for further examination. Since the petitioner violated the provisions of Section 113 of the M.V. Act, a notice was issued under Section 200 of the M.V. Act, for collection of the compounding fee. The writ petition is therefore, liable to be dismissed with costs.

3. The point for consideration is:

> Whether the order dated 1-7-2004 issued by the first respondent is not valid under law and whether it is liable to be set aside?

4. The first respondent is contending that the petitioner overloaded his Goods vehicle on 352 occasions during the financial year 2000-01. The particulars of the overload of the vehicle to various destinations are enclosed to the writ petition mentioning the dates, the destination of the vehicle, the total load of the vehicle and the excess load. The petitioner did not deny the overloading of the vehicle on all the occasions. In the notice dated 15.09.2001, the second respondent mentioned that the petitioner transported various goods under the Public Distribution System to various destinations by carrying overloads in his goods carriage AP 21 T 8181 and required him to pay Rs.19,62,200/- towards compounding fee under Section 200 of the M.V. Act, and if he has any objections, he may appear before the second respondent for personal hearing at 11 AM on 03.10.2001, failing which, it will be construed that he has no explanation to offer and action deemed fit under the law would be initiated.

5. In response to the said notice, the petitioner submitted an explanation

on 26.09.2001. In the said reply notice the petitioner mentioned that he was a Handling and Transport Contractor for Government Depots, APSWC, Kurnool and Anantapur, FCI, Kurnool, APSCSC, Kurnool, CWC, Adoni/Mahaboobnagar, for the period from 1986 to 1993. He was undertaking unloading of essential commodities under the Public Distribution System from wagons to the trucks and from goods shed to the respective depots. He engaged private lorries from local market and transported the goods. In the transportation every lorry used to carry about 12 metric tons of rice with a view to clear the wagons before the free time to avoid payment of demurrages to the railways. The said practice was going on at all places in any district in the state. If the authorities so desire, the warehouse managers of the respective Districts may be addressed for supply of "wagon receipt weighment particulars" Register, which reflect the violation of Section 200 of the M.V. Act. The transport contractors of A.P. State Essential Commodities Corporation and A.P. State Civil Supplies Corporation used to load the goods vehicles with 13 to 15 metric tons of food grains under Public Distribution System. In the year 2000-01, he got transport contract of A.P. State Civil Supplies Corporation along with other partners. During the said period, a huge allotment of 30,000 metric tons of rice was given under "drought scheme" in addition to other Public Distribution Schemes. As there was a great pressure from the concerned authorities for immediate lifting of rice to avoid lapse, the petitioner and his partners have engaged their own trucks with a view to complete the lifting of the rice. The petitioner loaded the trucks with 13 to 14 metric tons. The Civil Supplies Department lorry, which was having 9.5 metric tons capacity, was overloaded. As per Section 200 of the M.V. Act, the department has to levy the compound fee, when the goods carriage was carrying overload. But while carrying overload the vehicle was not checked and no compounding fee was levied, therefore, there cannot be any compounding fee after abnormal delay. The petitioner gained an impression that the essential commodities under the Public Distribution System are exempted from over loading.

6. The above details given by the petitioner amply establish that the petitioner over loaded his vehicle on the dates mentioned in the list enclosed to the writ petition. The particulars of the excess load are also available in the said list.

The petitioner while conceding that he over loaded the vehicle on 352 occasions, took a plea that unless the concerned officials intercepts the vehicle carrying overloads, they have no power to issue any notice demanding the compounding fee on the basis of the information made available subsequent to the date of carrying the overload.

7. The learned counsel for the petitioner vehemently argued by contending that since there is no provision in the M.V. Act and the Rules for imposition of compounding fee on detection of overloading of goods vehicle, through the entries of the relevant records, the impugned order dated 01-07-2004 is liable to be set aside.

8 . In the light of the contentions raised by both the parties, it may be appropriate to refer to the relevant provisions of the M.V. Act and the M.V. Rules.

i) Section 113 of the M.V. Act deals with the limits of weight and limitations on use. It reads as follows:

Section 113. Limits of weight and limitations on use:-

> (1) The State Government may prescribe the conditions for the issue of permits for (transport vehicles) by the State or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route.
>
> (2) Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.
>
> (3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer-
>
> a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicles, or
>
> b) the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration.
>
> (4) Where the driver or person in charge of a motor vehicle or trailer

driven in contravention of sub-section (2) or clause (a) of sub-section 3 is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

ii) Section 114 of the M.V. Act gives the power to the authorities to the Motor Vehicle Department to get the loaded vehicle weighed and it reads as follows:

"Section 114. Power to have vehicle weighed:-

(1) Any officer of the Motor Vehicles Department authorized in this behalf by the State Government shall, if he has reason to believe that a goods vehicle or trailer is being used in contravention of Section 113, require the driver to convey the vehicle to a weighing device, if any, within a distance of 10 Kilometres from any point on the forward route or within a distance of 20 Kilometres from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to contravene in any respect the provisions of Section 113 regarding weight, he may, by order in writing, direct the driver to off-load the excess weight at his own risk and not to remove the vehicle or trailer from the place until the laden weight has been reduced or the vehicle or trailer has otherwise been dealt with so that it complies with Section 113 and on receipt of such notice, the driver shall comply with such directions.

(2) Where the person authorized under sub-section (1) makes the said order in writing, he shall also endorse the relevant details of the overloading on the goods carriage permit and also intimate the fact of such endorsement to the authority which issued that permit."

iii) Section 207 gives the power to the transport authorities to detain vehicles used without certificate of Registration, permit etc., and it reads as follows:

Section 207. Power to detain vehicles used without certificate of registration permit, etc.:-

(1) Any police officer or other person authorized in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of Section 3 or Section 4 or Section 39 or without the permit required by sub-section (1) of Section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle:

Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used in contravention of Section 3 or Section 4 or without the permit required by sub-section (1) of Section 66 he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgement in respect thereof.

(2) Where a motor vehicle has been seized and detained under sub-section (1), the owner or person in charge of the motor vehicle may apply to the transport authority or any officer authorized in this behalf by the State Government together with the relevant documents for the release of the vehicle and such authority or officer may, after verification of such documents, by order release the vehicle subject to such conditions as the authority or officer may deem fit to impose."

Sections 66 (1), 79 (2)(ii) & (viii) and 194 of the M.V. Act reads as follows:

66. Necessity for permits: (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorize the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

…

79. Grant of goods carriage permit:

…

(2) The Regional Transport Authority, if it decides to grant a goods carriage permit, may grant the permit and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:--

…

(ii) that the gross vehicle weight of any vehicle used shall not exceed a

specified maximum;

…

(viii) that the conditions of the permit shall not be departed from, save with the approval of the Regional Transport Authority;

…

194. Driving vehicle exceeding permissible weight:

1. Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 113 or Section 114 or Section 115 shall be punishable with minimum fine of two thousand rupees and an additional amount of one thousand rupees per tonne of excess load, together with the liability to pay charges for off-loading of the excess load.

2. Any driver of a vehicle who refused to stop and submit his vehicle to weighing after being directed to do so by an officer authorized in this behalf under Section 114 or removes or causes the removal of the load or part of it prior to weighing shall be punishable with fine which may extend to three thousand rupees.

v) Rule 399 reads as follows:

"Rule 399. Weighing of vehicles believed to be used in contravention of restrictions:-

(1) Any officer referred to in Rule 396 may if he has reason to believe that a goods vehicle is being used in contravention of any laden weight restriction imposed by competent authority, require that driver to convey the vehicle to weighing device, if any, within a distance of 1.6 kilometres from any point on the forward route, or within a distance of 8 kilometres from the destination of the vehicle, for the weighing, and if on weighing, the vehicle is found to contravene such restrictions, he may, by order in writing, direct the driver to convey the vehicle to a suitable place to be specified in the notice where the facilities exist for the storage of goods and not to remove the vehicle from that place until the laden weight or axle weight has been reduced so that it complies with such restriction. The charges for weighment shall be borne by the owner of the vehicle or the person in possession of the vehicle, whoever is available at the time of weighment of the Vehicle.

(2) The officers specified in Rule 396 for the purpose of storage of goods as required in sub-section (1) of Section 114 read with sub-rule (1) shall cause the vehicle to be taken to the office of the Regional Transport Officer, who shall be the prescribed officer to exercise the powers and perform the functions specified in sub-section (2) of Section 114:

Provided that no goods vehicle shall be deemed to have contravened the laden weight restrictions, if the excess weight is not more than 5% of the permitted laden weight."

9. After going through the above provisions of the M.V. Act, it is clear that Section 113 of the M.V. Act deals with the limits of the weight and limitations of use. Section 114 of the M.V. Act gives power to the transport authorities and other authorities authorized by the State Government to check the vehicle, which is being used in contravention of the Section 113 of the M.V. Act. Section 207 of the M.V. Act also empowers the police officer or any other officer to detain the vehicle used without Certificate of Registration, permit etc. The provisions covered by Section 207 of the M.V. Act are general provisions regarding the contraventions in using the vehicles. Section 113 of the M.V. Act mandates that the State Government shall prescribe, which restrict to the use of the vehicles for a particular weight. Under Section 114 of the M.V. Act, if an officer believes that a goods vehicle is being used in contravention of Section 113 of the M.V. Act, may require the driver to convey the vehicle to a weighing device within a distance of 10 KMs or from any point on the forward route and within a distance of 20 KM from the destination of the vehicle for weighment and the driver has to comply the direction by getting the vehicle weighed. Under Rule 286, the Checking Officer has to prepare a record of inspection in writing, of the irregularities noticed and shall furnish a copy thereof to the owner or the driver of the vehicle, who is present in the vehicle at that time. Rule 399 is regarding the weighment of the vehicle, which was believed to be used in contravention of the restrictions. Section 200 of the M.V. Act deals with the compounding of the offence by the concerned authorities.

10. The learned counsel for the petitioner relied on a Judgment of a Single Bench of this Court in **M.Muralidhar Reddy V . Deputy Transport Commissioner and Secretary, RTA, Kurnool** in support of his contention that when the vehicle was not intercepted at any time while transporting excess load, no compounding fee can be levied.

In the above decision, the basis for demanding of Rs.4,28,300/- under Section 200 of the Motor Vehicles Act was that the Vigilance and Enforcement Officer had addressed a letter on
7-7-2001 stating that during the course of transporting the essential

commodities to various distribution points, the petitioner's vehicle was overloaded. The learned single Judge while referring to Section 114 of the Act held that since there is no provision in the M.V. Act or the Rules empowering any authority to impose penalty or directing to pay compounding fee, the respondents are not competent to issue such notice.

11. The learned counsel for the petitioner further submitted that even if there is record to show that the petitioner indulged in transporting excess load in the absence of any provision under the Act or the Rules, the cognizance of such incident of over loading cannot be taken. He, therefore requests to give the benefit of the absence of any specific provision making the past incidence of carrying overload an offence under any provisions of the M.V. Act. He further submits that since none of the officials authorized under the Act intercepted the vehicle on any one of the 352 occasions, the impugned notice dated 01-07-2004 is beyond the jurisdiction of the first respondent. Therefore, the impugned order is liable to be quashed.

12. Though Section 207 empowered the authorities to seize and detain the vehicles if there is any contravention of any of the conditions of the permit either during inspection or on prior occasion, it did not provide for imposition of compound fee. The respondents instead of seizing the vehicle resorted to pass the impugned order without referring to any of the provisions of the Act. I am therefore concurring with the view expressed in **Muralidhar Reddy** (1 supra) and hold that the impugned order dated 1-7-2004 is beyond the jurisdiction of the first respondent and accordingly it is quashed.

13. In the result, the writ petition is allowed. No order as to costs.

14. This order will not preclude the respondents from taking necessary action permissible under law against the petitioner.

Dr. G.YETHIRAJULU, J

23rd December 2004

SKM

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Deputy Transport Commissioner & Secretary, Regional Transport Authority, Kurnool.
2. The Regional Transport Officer, Regional Transport Authority, Kurnool.
3. The Vigilance & Enforcement Officer, Vigilance & Enforcement Department, Kurnool.
4. Two C.Cs. to the Government Pleader for Transport, High Court of A.P., High Court Buildings, Hyderabad. (OUT)
5. Sri K. Madhava Reddy, Advocate (OPUC)
6. 2 CD copies

*Form-NIC-OGS/WP{**SPJS**}*